

1 PHILIP J. TERRY (148144)
2 CARLE, MACKIE, POWER & ROSS LLP
3 100 B Street, Suite 400
Santa Rosa, California 95401
Telephone: (707) 526-4200
Facsimile: (707) 526-4707

4 Attorneys for Plaintiff
5 ROLAND E. GARCIA dba
GARCIA INTERNATIONAL TRADING

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8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 ROLAND E. GARCIA, doing business as
"GARCIA INTERNATIONAL TRADING",

11 Plaintiff(s),

12 v.

13 DAVID COLEMAN, an individual, ; ANN
14 COLE, an individual; AMERIVINE, INC., and
DOES 1 - 100, ,

15 Defendant(s).

16 Case No. C 07-2279

17 **EX PARTE MOTION FOR
ADMINISTRATIVE RELIEF
(CONTINUANCE OF CASE
MANAGEMENT CONFERENCE)
[L.R. 7.10; L.R. 7.11]; MEMORANDUM
OF POINTS AND AUTHORITIES;
DECLARATION OF PHILIP J. TERRY;
[PROPOSED] ORDER CONTINUING
CASE MANAGEMENT CONFERENCE**

18 **Judge: Hon. Edward M. Chen**

19 EX PARTE MOTION FOR ADMINISTRATIVE RELIEF (CONTINUANCE OF CASE
MANAGEMENT CONFERENCE) [L.R. 7-11]

20 Pursuant to U.S. Dist. Ct., Northern Dist. Cal., rules 7-11 and 7-10, Plaintiff ROLAND E.
21 GARCIA dba GARCIA INTERNATIONAL TRADING respectfully requests that the initial
22 Case Management Conference currently set in this matter for August 1, 2007, at 1:30 p.m. be
23 continued to allow for 1) Defendants' to file responsive pleadings to the Summons and
24 Complaint served via Notice of Lawsuit and Request for Waiver of Service of Summons and 2)
25 allow for the parties to engage in a meaningful FRCP 26(f) initial conference after the
26 Defendants filing of their responsive pleadings currently due July 24, 2007.

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MEMORANDUM OF POINTS AND AUTHORITIES EX PARTE MOTION FOR
CONTINUANCE OF CASE
MANAGEMENT CONFERENCE [L.R. 7-11]

3 U.S. Dist. Ct., Northern Dist. Cal., rule 7-11 provides that “*during the course of case*
4 *proceedings a party may require a Court order with respect to miscellaneous administrative*
5 *matters. . .*” Pursuant to rule 7-11 Plaintiff requests that the Initial Case Management
6 Conference set for August 1, 2007, be continued to allow for the appearance of defendants.
7 Defendants have not yet appeared in this matter and will not suffer any prejudice should
8 Plaintiff’s ex parte request for the continuance of the Initial Case Management Conference be
9 granted. Because Defendants will not suffer any prejudice, granting of Plaintiff’s ex parte
10 request is proper pursuant to U.S. Dist. Ct., Northern Dist. Cal., rule 7-10. As more particularly
11 set forth below, service of the initial complaint in this matter was delayed due to the
12 undetermined status of defendants’ service address. Plaintiff has now accomplished service of
13 the Summons and Complaint and requests administrative relief to allow Defendants’ filing of
14 their responsive pleadings and to allow the parties sufficient time to engage in a meaningful
15 FRCP 26(f) initial conference.

DECLARATION OF DAWN M. ROSS
IN SUPPORT OF EX PARTE MOTION FOR
CONTINUANCE OF CASE MANAGEMENT CONFERENCE

I, Philip J. Terry, declare as follows:

19 1. I am an attorney with the law firm of Carle Mackie Power & Ross LLP, attorneys
20 of record for Plaintiff ROLAND GARCIA dba GARCIA INTERNATIONAL TRADING.

21 2. I have personal knowledge of the facts set forth in this declaration and if called
22 upon I could and would competently testify as follows:

23 3. Plaintiff ROLAND GARCIA dba GARCIA INTERNATIONAL TRADING filed
24 a complaint in the above-entitled Court on April 26, 2007, naming defendants DAVID
25 COLEMAN, ANN COLEMAN, and AMERIVINE, INC.

26 4. The last day to complete service the Summons and Complaint pursuant to
27 F.R.C.P. section 4(m) is August 24, 2007. The Initial Case Management Conference is set in this
28 matter for August 1, 2007.

1 5. Plaintiff initially made several service attempts at Defendants' last known address
2 in Santa Rosa, CA. After several failed attempts, Plaintiff attempted service at Defendants' last
3 known business address where the process server was informed by the receptionist that
4 Defendants' still kept an office and was also informed that Defendants' had a second residence
5 in Palm Springs, CA. Substitute service was effected on the individual defendants at that time.
6 Service attempts were also made in Palm Springs, CA.

7 6. Shortly after substitute service was effected on the individual Defendants,
8 Plaintiff's counsel was contacted by counsel for Defendants who disputed effective process
9 service but agreed to assist with the facilitation of service on all Defendants via Notice of
10 Lawsuit and Request for Waiver of Service of Summons.

11 7. Service of the Summons and Complaint has now been accomplished. Plaintiff
12 accomplished service via Notice of Lawsuit and Request for Waiver of Service of Summons.
13 Waivers were executed by each defendant on June 12, 2007, and responsive pleadings are due
14 July 24, 2007.

15 8. Plaintiff has not obtained a stipulation for continuance of the Initial Case
16 Management Conference since the defendants have not yet appeared.

17 I declare under penalty of perjury under the laws of the United States of America that
18 foregoing is true and correct. Executed within the United States on this 10th day of July, 2007.

CARLE, MACKIE, POWER & ROSS LLP

PHILIP J. TERRY (148144)
Attorneys for Plaintiff

ORDER CONTINUING CASE MANAGEMENT CONFERENCE

Having read and considered the foregoing EX PARTE MOTION FOR
ADMINISTRATIVE RELIEF (CONTINUANCE OF CASE MANAGEMENT
CONFERENCE), and GOOD CAUSE APPEARING,

5 The Court hereby continues the Initial Case Management Conference and related
6 deadlines from August 1, 2007, to October 17, 2007, at 1:30 p.m. A

IT IS SO ORDERED.

8 | DATED: 7/12/07

The Honorable Edward M. Chen
Magistrate of the U.S. District Court

Magistrate
IT IS SO ORDERED
AS MODIFIED

Judge Edward M. Chen

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Ex-Parte Motion for Administrative Relief